

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Illinois Bell Telephone Company)	
)	00-0393
Proposed Implementation of High Frequency)	
Portion of the Loop (HFPL) / Line Sharing Service)	

**REPLY TO BRIEFS ON EXCEPTIONS OF THE STAFF
OF THE ILLINOIS COMMERCE COMMISSION**

August 28, 2001

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The Staff of the Illinois Commerce Commission (hereafter “the Staff”), pursuant to Section 200.830 of the Rules of Practice before the Illinois Commerce Commission, 83 Ill. Admin. Code 200.830, as its Reply to Brief on Exceptions herein, states as follows:

1. STAFF’S ALTERNATIVE PROPOSAL

Ameritech requests that the Proposed Order on Rehearing (“Proposed Order”) clarify Staff’s alternative proposal, and that unnecessary references and reliance upon the Texas Award¹ be deleted. Ameritech BOE at 7. While Staff agrees that it’s proposal speaks for itself, Staff IB at 17-24, Staff has no objection to referencing the Texas Award since the Texas Award orders Southwestern Bell to offer an end-to end UNE, similar to Staff’s alternative proposal. Ameritech’s assertions are correct, however, that the Texas Award does not require a tariff filing by Southwestern Bell, and that the pricing to be established in Texas might differ from the pricing here in Illinois. Ameritech BOE at 7-8.

The most practical solution to this concern is to modify the second to last sentence in Section D of Issue II. Staff proposes to reference the proposed tariff language in the Order as follows: “To that end, in this Order on rehearing, we accept Staff’s alternative proposal as described herein. Specifically, we order Ameritech to file, in Illinois, an interim tariff identical to the proposed language attached to Staff’s RBOE. We accept Ameritech Illinois’ proposed prices for the NGDLC UNE-P, as modified by Staff, as interim prices until final prices are established in the permanent pricing phase of this docket.”

Staff proposes that an interim tariff be enacted, pursuant 13-501 of the Illinois Public Utilities Act (“PUA”) and that Ameritech-Illinois be required to file a permanent

¹ Arbitration Award, Petition of IP Communications/ Petition of Covad Communications and Rhythm Links, Inc., Texas PUC Docket Nos. 22168/22469 (hereafter “Texas Award”).

tariff as soon as the pricing phase of this docket is completed. Section 13-501 allows the Commission, after a hearing, “to impose an interim or permanent tariff on a telecommunications carrier as part of the order in the case.” 220 ILCS 5/13. This interim tariff “shall remain in full force and effect until a compliance tariff, or superseding tariff, is filed by the telecommunications carrier and, after notice to the parties in the case and after a compliance hearing is held, is found by the Commission to be in compliance with the Commission’s order.”

An interim tariff for this proceeding pursuant to Section 13-501(b) is appropriate since the adoption of the attached tariff language ensures that Ameritech Illinois promptly complies with the Commission’s Order in this docket. Staff recommends that the Commission require Ameritech-Illinois file the language in Attachment A, after making the appropriate formatting changes to bring it into a tariff format. Ameritech should file the interim tariff with the attached language within thirty days of the entry of this Order.

In addition, Staff disagrees with Ameritech’s proposed changes to the language of the Proposed Order because the arguments in Ameritech’s BOE do not support the changes, and in some instances, the proposed changes exceed the arguments. Specifically, Ameritech wants to include assumptions about Ameritech’s deployment of Project Pronto, Ameritech BOE, Attachment A at 2, however, there is no support for these assumptions in Ameritech’s BOE. Additionally, Ameritech’s proposed language adds a number of factual references with the proposition that the Commission based its decision on these facts. These references should be omitted since neither the BOE, nor the proposed language, cite the sources supporting these references to evidence.

2. Staff's Proposed Modifications to Joint CLEC Tariff Language

Staff has reviewed the Joint CLEC proposed tariff submitted with its Brief on Exceptions and proposes the following modifications.

Staff proposes that the last sentence of Section 1.7 (Introduction) be stricken. Nowhere in the Proposed Order does it state that CLECs should be able “to place or own line cards in any Ameritech IL NGDLC equipment.” CLEC installation or ownership of line cards will not change with the release of software version 11. Staff's proposal clearly stated that Ameritech IL was the one who would own and maintain the line cards. The release of version 11 of the Alcatel software would not affect this. The only thing Staff proposed in conjunction with the release of software version 11 is to allow CLECs to purchase PVPs, in addition to PVCs.

Staff proposes that the last sentence of Section 5.3.2. (HFPSL) be stricken. Staff views the sentence unnecessary and potentially confusing. Additionally, it refers to the Texas Commission, rather than the ICC.

Staff proposes that Sections 7.6.1 (UBR), 7.7.1, 7.7.2, and 7.7.8 (CBR) be modified as follows. Staff recommends removing the last sentence of Section 7.6.1 and the last two sentences of Section 7.7.1. Section 7.7.8 should be modified to remove the reference to multiple PVCs. Staff notes that currently, SBC does not offer up to four PVCs per end-user and it would be inappropriate to tariff something that does not exist yet. Staff believes that Section 7.6.7 adequately addresses CLECs' concerns about the ability to order more than one PVC per end-user, since the last sentence of that Section states that “Ameritech-IL must prove to the Commission that the CLEC's PVC is not

technically feasible.” Staff also proposes to add some clarifying language to Section 7.7.2. After the third sentence of that Section, Staff proposes to insert the following: “CLECs are aware that the permanent pricing of the NGDLC UNE-P has not been completed and that the price of a CBR PVC tends to increase with the increase in bandwidth of the CBR PVC.”

Staff proposes that the last sentence of Section 9.5 (Availability of Future Features and Functions) be replaced with the following:

“If Ameritech Illinois does not deploy commercially available line cards within 30 calendar days, Ameritech IL shall be required to show the Commission why a certain technology is not technically or economically feasible to provision.”

This change in language accounts for the fact that even though something is technically feasible, it might not make sense from an economic point of view. For example, it is often technically feasible to collocate at or near a remote terminal, yet the costs associated with it might prove to be prohibitive.

It also Staff’s view that the language at the end of Section 10 (Access to Unbundled Subloops and/or Dark Fiber) is currently not supported by the Proposed Order. Staff recommends deleting the last two sentences of Section 10. The language suggests that Ameritech be required to provide lit fiber subloops if a CLEC decides to collocate at or near an Ameritech’s remote terminal. CLECs successfully showed that RT collocation is almost always prohibitively costly and therefore Staff, at this time, sees no need for additional arrangements besides the dark fiber option. In addition, the Proposed Order created an end-to-end UNE, not multiple UNEs.

Staff proposes to clarify and amend Section 12.5 (OCD Port Sharing) as follows.

The following should be inserted after the Joint CLECs' proposed language.

"CLECs shall agree upon one single point of contact for Ameritech IL. The single point of contact is responsible for all matters surrounding the lease of an OCD port. Ameritech IL will bill the single point of contact for the entire OCD port. It is CLECs' responsibility to bill each other in the case of OCD port sharing.

And finally, the first sentence of Section 15.11 should be modified to remove the reference to the Texas Commission.

3. UNBUNDLING OF PACKET SWITCHING

Ameritech asserts that this case involves packet switching and unbundling of packet switching pursuant to the four conditions in 47 CFR §51.319(c)(5). Ameritech BOE at 7-8. Staff addressed the unbundling of packet switching on pages 8 to 17 of its Initial Brief and stands upon its arguments made therein. Additionally, the Joint CLECs explained that they are not requesting packet switching, but are asking for unbundled access to line sharing over hybrid-copper loops, either on an end-to-end basis or via the unbundled elements identified in the Original Order, Docket No. 00-0393, dated March 14, 2001. Since the FCC has unbundled the high frequency portion of the loop, Ameritech should allow access to line sharing over the Pronto architecture, as already correctly decided in the Original Order on page 25. Even if the Commission finds that the four conditions need to be applied, the criteria are met and Project Pronto should be unbundled.

If the Commission finds that the unbundling of the Project Pronto architecture deployed by SBC/Ameritech involves the unbundling of a packet switching network, §51.319(c)(5) provides an exception to the FCC's finding that packet switching need not be unbundled. The key point of this exception is that a CLEC is impaired if the ILEC "can effectively deny competitors entry into the packet switching market" such that the CLEC cannot "offer the same level of quality of advanced services" when the ILEC has deployed DLC systems. UNE Remand Order at para. 313. The facts in this case prove this point, and meet the four conditions. Staff IB at 8-17. Additionally, the Texas Public Utility Commission analyzed the four prong test in unbundling Project Pronto in Texas. Staff IB at 16-17. The facts supporting the findings made by the Texas PUC can also be found in Ameritech-Illinois' system. The Joint CLECs Initial Brief, on pages 66 through 72, set forth the facts of this case as they apply to the FCC's four conditions for unbundling packet switching, and therefore need not be repeated here.

The record in this case indicates that the four conditions of 47 CFR §51.319(c)(5) have been met, and Project Pronto should be unbundled.

4. THE FCC's RULE DOES NOT NEED TO BE ANALYZED ON AN RT-BY-RT BASIS

Ameritech argues that the FCC clearly requires that the packet switching exception in 47 CFR § 51.319(c)(5) must be performed on each and every RT.

Ameritech BOE at 9. Ameritech states that the UNE Remand Order para. 313 requires unbundling where a particular confluence of circumstances occur, and argues that the Proposed Order is contrary to the UNE Remand Order because the Proposed Order

requires unbundling whenever the four conditions allegedly exist anywhere in the state. Id. Ameritech is incorrect, because the UNE Remand Order does not expressly require RT-by-RT analysis, and moreover, the reasoning for not performing an RT-by-RT analysis, as provided in the Proposed Order, is practical and reasonable. Proposed Order on Rehearing at 32.

Additionally, Ameritech is not disadvantaged by a Commission determination applied to all RT's at one time, as this order does, however, there is a significant negative impact if the Commission followed Ameritech's recommendation of making determinations on an RT-by-RT basis. As correctly stated in the Proposed Order, analyzing each RT would "stymie, through protracted litigation and regulation, the use of the facilities." Id. at 32. Considering that there are nearly 2100 RTs in Illinois, making determinations on an RT-by-RT basis would unnecessarily burden the ICC with litigation. Id. at 33.

Therefore , Staff recommends the Proposed Order's language in §II.D -- Commission Analysis and Conclusion remain unchanged.

5. IMPAIR TEST — APPLIES TO PRONTO PACKET SWITCHING

Ameritech contends that the Proposed Order's impair test is not supported by law and fact and should be revised. Ameritech BOE at 12, 17. Ameritech is incorrect. The Proposed Order correctly found that it "unquestionably" has the authority to unbundle Project Pronto, and determined that SBC's Broadband service is not the answer. Proposed Order on Rehearing at 32-33.

First, Ameritech argues that the Commission cannot re-apply the 1996 Telecommunication Acts' unbundling standards after the FCC has already applied them. Ameritech Rehearing BOE at 12. This is plainly incorrect, since the Original Order correctly determined that states have the ability to impose requirements that exceed those that the FCC have set, Original Order at 5 and Ameritech has not provided a legal or factual basis to alter that Order.

Additionally, the Ameritech arguments attack the factual findings of the Proposed Order regarding the characterization of it being a “gatekeeper” of DSL services, its ability to withdraw the Broadband service on its own decision, or whim, and that broadband prices would be “subject to price and term manipulation.” Ameritech Rehearing RBOE at 13. These factual findings are clearly supported in pre-filed testimony and hearing transcripts. For instance, Ameritech witness Carol A. Chapman, filed a Broadband Service Interim Agreement with her rebuttal testimony. Ameritech witness Carol A. Chapman, rebuttal testimony, Attachment CAC-4. Section 21.2 of that interim agreement granted SBC/Ameritech the sole discretion to change, modify and/or withdraw the BBS, in whole or in part, as a result of regulatory developments, including but not limited to action or inaction on matters pending before the FCC or the State of Illinois. Thus granting Ameritech the ability to withdraw the Broadband service on its own decision.

Through its Broadband Service Interim Agreement Ameritech has placed itself in a position of a gatekeeper. Section 11 of that agreement provides the guidelines by which Ameritech will make new xDSL functions and features available to CLECs. Ameritech witness Carol A. Chapman, rebuttal testimony, Attachment CAC-4.

Ameritech currently only offers ADSL service. Ameritech witness Carol A. Chapman, rebuttal testimony, Attachment CAC-4, §11.1. Other forms of xDSL service are available in the marketplace, however, §11.2 states that SBC/Ameritech “reserves the sole right to determine whether there is a practical and technically feasible means to deploy such feature or functionality where SBC/Ameritech deploys the NGDLC architecture described herein.” Thus, besides being in potential conflict with state and federal law, this provision attempts to reserve Ameritech sole control of determining what new services will be released.

Thus, Ameritech’s attacks of the Proposed Order’s application of the impair test should be discarded, as should Ameritech’s proposed revisions to the Proposed Order.

6. ACCESS TO BACK END SYSTEMS

In their Brief on Exceptions, the Joint CLECs argue that the Proposed Order’s denial of direct access to back end systems constitutes legal error, and to correct that error the decision in the Original Order should be reinstated. Joint CLEC BOE on Rehearing at 20, 32-35. Staff disagrees that the CLECs are entitled to direct access under federal law but agree that the CLECs are entitled to determine compliance with the UNE Remand Order. As discussed previously in Staff’s briefs, the UNE Remand Order does not require direct access to all back end systems of Ameritech. Rather CLECs are entitled to unfiltered access to all loop qualification information that is available to Ameritech, Ameritech’s affiliates, or any employees of any of them. UNE Remand Order para. 430. However, state commissions may require more than what

the federal law requires as long as there is an evidentiary basis for the additional requirements. Original Order at 5, citing 220 ILCS 5/13-505.6. Moreover, under state law, an audit requirement can be imposed by a State commission to ensure effective implementation of the federal mandate. 47 USC §261(c); Staff Brief at 46-47.

The Proposed Order correctly decided that the CLECs should have access in accordance with the UNE Remand Order paragraphs 425 through 431. This decision is consistent with the findings in Docket No. 00-0592, and, Staff believes, the proper interpretation of Ameritech Tariff Part 19, Section 2.5 -- Operational Support Systems: Loop Make-Up Information. In summary, the CLECs are entitled to access to “the underlying loop qualification information contained in its engineering records, plant records, and other back office systems so that requesting carriers can make their own judgment about whether those loops are suitable for the services the requesting carriers seek to offer.” UNE Remand Order para. 428.

In Docket No. 00-0592, the CLECs failed to provide sufficient evidence that direct access to back end systems was necessary to permit the CLECs to “make their own judgment about whether [the] loops are suitable for the services the requesting carriers seek to offer.” Order 00-0592 at 12. Indeed, the Commission made it clear in Docket No. 00-0592, that its decision not to impose a direct access requirement was made because Covad had provided no evidence to support a requirement that would go beyond the federal law requirements. Order 00-0592 at 12. “By Covad’s own admission, there is no factual showing on record that would sustain such action by the Commission and none is offered.” Id.

In the Arbitration Orders in Dockets 00-0312 and 00-0313(cons.) and this proceeding, the Joint CLECs did provide evidence which was accepted by the Commission that in order to make their own judgments regarding the suitability of loops and to ensure that the CLECs are obtaining all of the loop qualification information available to Ameritech and its employees, the CLECs first need to identify what underlying loop qualification information is contained in Ameritech's back office system. Docket No. 00-0592 did not reach a decision regarding the fields of information the CLECs should be able to access in compliance with the UNE Remand Order. The audit of Ameritech's OSS systems required by the Original Order would help identify that information. Original Order at 65. Therefore, Staff recommends that the Proposed Order be revised so as to maintain the Original Order's commitment (b), that grants CLECs the ability to audit Ameritech's OSS systems to determine what data is useful in providing line shared xDSL. Id.

Staff agrees that the Proposed Order should be clarified and recommends the deletion of Section D of Issue IX and its replacement with the following language:

D. Commission Analysis and Conclusion

The Commission recently disposed of the same issue in the Order on Rehearing in ICC Docket No. 00-0592, where we concluded that direct access was not required by Federal law nor necessary, given the proofs adduced by the parties seeking it in that Docket. Consistent with the Order in ICC Docket No. 00-0592, We reaffirm that the CLECs are entitled under the FCC's UNE Remand Order to unfiltered access to all loop qualification information, in the same whatever form or format that information is available to Ameritech, its affiliates or any employees of either, in order to permit the CLECs to "make their own judgments about whether [the] loops are suitable for the services the requesting carriers seek to offer." UNE Remand Order at ¶ 428. Moreover, state commissions have the authority to go beyond federal law requirements provided that there is a sufficient evidentiary basis for any additional requirements. While

generally consistent with the approaches taken in Dockets 00-0312 and 00-0313 (cons.) (Orders entered August 17, 2000) (“Arbitration Orders”) and in the original order in this docket, which was based in large part upon the Arbitration Orders, the decision in Docket 00-0592 differed from the Arbitration Orders and this docket in one respect. In this proceeding and in the Arbitrations, the CLECs provided sufficient evidence and We accepted the CLEC’s arguments based upon such evidence that, without direct access to Ameritech’s back end systems pursuant to the audit procedures We ordered in this Docket’s original order in this proceeding, there was no way to be sure that Ameritech was providing all of the relevant information on all loops on an unfiltered basis. Moreover, the confidentiality concerns raised by Ameritech in Docket 00-0592 were sufficiently addressed in this Docket. Original Order at 62. At the time of the Arbitrations, the Commission had not yet had the opportunity afforded in Docket 00-0592 to review the issues raised by the CLECs regarding Ameritech’s OSS systems. Now that Docket No. 00-0592 is complete and based upon the modifications that were ordered, We now conclude that Ameritech’s OSS support for pre-ordering and ordering xDSL services is, or soon will be implemented and will be tested pursuant to Condition 29 of Docket 98-0555 and, therefore, We abandon the position taken in the Arbitrations, as no longer necessary, except for commitment (b), which grants CLECs access (but not direct access), to the information contained in Ameritech’s OSS back-end systems solely for the purposes of performing a CLEC audit of such information in order to determine compliance with the UNE Remand Order.

For these reasons, we reverse our decision requiring direct access to Ameritech Illinois’ back office systems but maintain that there should be a CLEC audit of Ameritech’s OSS databases to determine what underlying loop qualification information is contained in Ameritech’s back office system that the CLECs would need to provide xDSL service. If, as a result of the audit, additional loop qualification information should be made available to the CLECs then Ameritech is order to provide such additional information to the CLECs promptly after completion of the audit.

As more particularly described in our original order, Ameritech Illinois must provide for a CLEC audit of all OSS databases and backend systems in order to determine that loop qualification information is being provided to the CLECs on an unfiltered basis pursuant to the terms of our original order. Such audit shall include, at a minimum, the following systems: LFACS, FACS, TIRKS, ARES, TMM, SWITCH, SWITCH DLESDAC, ACIS, WFA/C, WFA/DO, WFA/DI, LMOS, LEAD/LEIS, SMART and PCAT systems and/or databases and shall include, in advance, all documentation needed to audit the systems and databases, including but not limited to user guides, data dictionaries, glossaries, job cards and table guides, with a description of each data field, all valid entries and an explanation of the data in that field.

Finally, We adopt Ameritech Illinois' proposed tariff language with the clarification that We interpret Ameritech's tariff to provide to the CLECs, in accordance with the FCC's UNE Remand Order, unfiltered access to the same loop make-up information that the Company provides to any CLEC and/or the Company and/or its advanced services affiliates, or employees of any of them. This reading is supported by the reference to the UNE Remand Order in the third sentence of the first paragraph of Ameritech's Tariff, Part 19, Section 2.5. To the extent that there is any loop qualification information in addition to the referenced information in the Plan of Record that is inconsistent with the above interpretation, Ameritech shall file a revised tariff within thirty (30) days after the issuance of this Order.

7. OSS Modification Charge

The Proposed Order correctly upholds its determination in the March 14 Order that set the OSS modification charge at \$0. Proposed Order on Rehearing at 44. Ameritech did not provide adequate support for its cost for OSS modification, and therefore has no basis for charging any specific amount for this upgrade. In light of the fact that the Original Order stated that the \$0 charge was not adequately supported, Ameritech needed to provide additional cost support for this charge in rehearing; they failed to provide this additional evidence.

In its Brief on Exceptions, Ameritech ignores this fact and continues to argue that a \$0 rate is an unlawful taking and is against TELRIC principles. Ameritech Rehearing RBOE at 34. Whatever merit some of these arguments may have had if Ameritech had provided sufficient cost support in this proceeding, Ameritech did not do so and therefore the arguments are irrelevant. The Company has continued to ignore its burden of proof, which requires Ameritech to make a showing that this rate is appropriate. Nowhere in the record to this proceeding, whether in the initial phase or the rehearing, has the Company identified the specific upgrades that it would be

receiving from Telcordia. Instead, Ameritech only provided a flat figure that was quoted by Telcordia for the upgrade. The Company simply expects the Commission to accept that a multi-million dollar upgrade is reasonable.

Staff recommends no changes to the Proposed Order concerning the OSS modification charge.

8. Manual Loop Configuration Charge

The Proposed Order correctly states that there is no new evidence to support a manual loop configuration charge. Proposed Order on Rehearing at 31. On pages 38 through 42 of its Brief on Exception, Ameritech raises no new arguments concerning this charge. As such, Staff's position concerning the charge has not changed.

Staff recommends no changes to the Proposed Order concerning the manual loop configuration charge.

9. CONCLUSION

For the foregoing reasons, Staff requests that the Commission accept Staff's recommendations in their entirety as set forth herein.

Respectfully submitted,

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